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See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

DUSTIN P.,)
) 2 CA-JV 2012-0015
)
 Appellant,)
)
 v.)
)
 ARIZONA DEPARTMENT OF ECONOMIC)
 SECURITY and D.P.,)
 Appellees.)
 _____)
)
 DUSTIN P.,) 2 CA-SA 2012-0012
) (Consolidated)
) DEPARTMENT A
)
) MEMORANDUM DECISION
 v.) Not for Publication
) Rule 28, Rules of Civil
 HON. DONNA M. BEUMLER,) Appellate Procedure
 Judge Pro Tempore of the Superior Court)
 of the State of Arizona, in and for the)
 County of Cochise,)
)
 Respondent,)
)
 and)
)
 ARIZONA DEPARTMENT OF ECONOMIC)
 SECURITY, CLAYTON C., ELIZABETH C.,)
 and D.P.,)
)
 Real Parties in Interest.)
 _____)

SPECIAL ACTION PROCEEDING
APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. JD201100017

Honorable Donna M. Beumler, Judge Pro Tempore

JURISDICTION DECLINED; REVERSED

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B R A M M E R, Judge.*

¶1 In this consolidated appeal and special action, Dustin P. challenges the juvenile court’s ruling “disestablish[ing]” his “paternity with respect to” his daughter D.P., born January 2005. Because Dustin has an equally plain and speedy remedy by appeal, *see* Ariz. R. P. Spec. Actions 1(a); *Jackson v. Schneider ex rel. Cnty. of Maricopa*, 207 Ariz. 325, ¶ 4, 86 P.3d 381, 383 (App. 2004), and because the issues

raised in the special action are the same as those raised on appeal, we decline to accept special-action jurisdiction. In considering the appeal, however, we conclude the court lacked a legal basis for finding Dustin is not the biological father of D.P., thereby effectively terminating his parental rights. Accordingly, we reverse the court's ruling.

Background

¶2 The facts pertinent to the appeal are essentially undisputed. Dustin was married to Elizabeth C., D.P.'s mother, for five years, until their marriage was dissolved in 2005. In the parties' dissolution decree, a Texas court determined that Dustin was the father of D.P. and A.P., who is not at issue here. Elizabeth thereafter married Clayton C., with whom she had another child. In March 2011, all three children were removed from Elizabeth and Clayton's custody after they disclosed that Elizabeth and Clayton had been sexually abusing them. The Arizona Department of Economic Security (ADES) filed a dependency petition thereafter.

¶3 The children were adjudicated dependent as to Elizabeth and Clayton in August 2011, and shortly thereafter D.P. moved for genetic testing to determine whether Dustin was her biological father. The court granted the motion, in which D.P.'s maternal grandparents¹ joined and which ADES did not oppose. Clayton "suggested that he be tested first" and was tested in November 2011 and confirmed as D.P.'s biological father to a probability of 99.99%. After a hearing, the court concluded ADES had established

¹The children's maternal grandparents, with whom the children were placed, were allowed to intervene in the proceedings.

Dustin “ha[d] neglected the minor children as evidence[d] by his failure to protect them,” and adjudicated D.P. and A.P. dependent as to Dustin in January 2012.

¶4 After receiving motions and “trial briefs” from the maternal grandparents, Elizabeth and Clayton, and ADES, as well as a motion from Dustin to “preserve [his] status as father of [D.P.],” the juvenile court held a hearing on paternity. At that hearing, the court acknowledged that the divorce decree had “established” paternity in Dustin, but nonetheless determined that D.P. had the right “to challenge paternity, even where paternity has already been established,” and on that basis ordered paternity “disestablish[ed] . . . with respect to [Dustin] as it pertains to [D.P.]” and “established by genetic testing” in Clayton. Dustin’s petition for special action and timely-filed notice of appeal followed.

Discussion

¶5 Raising several arguments, Dustin maintains the juvenile court lacked authority to “disestablish” his paternity and effectively terminate his parental rights. Because the issues presented are purely legal, we review the court’s decision de novo. *See Hall v. Lalli*, 194 Ariz. 54, ¶ 5, 977 P.2d 776, 779 (1999).

¶6 We first address Dustin’s argument that “proof of non-paternity, by itself, is insufficient to terminate a father’s rights.” Dustin’s argument on this point begins from the correct assertion that legally he is D.P.’s father. In the Texas divorce decree, the court ruled that he and Elizabeth were the parents of A.P. and D.P. *See* Tex. Fam. Code Ann. § 160.637(c) (“court is considered to have made an adjudication of the parentage of a child” in divorce decree if it includes certain language or provides for child support).

That decree is entitled to full faith and credit in this state and, on the record before us, never has been challenged. *See* A.R.S. § 25-815; *Bill v. Gossett*, 132 Ariz. 518, 520-21, 647 P.2d 649, 651-52 (App. 1982), *overruled on other grounds by Hall*, 194 Ariz. 54, 977 P.2d 776.

¶7 By its ruling on paternity in the context of the dependency proceeding, the juvenile court essentially terminated Dustin’s parental rights, which had been established in the divorce decree. But, as our supreme court pointed out in *In re Marriage of Worcester*, 192 Ariz. 24, ¶ 9, 960 P.2d 624, 627 (1998), A.R.S. § 8-533 “provides the method for, and the reasons justifying, terminating a parent-child relationship.” And that “statute does not enumerate proof of nonpaternity, by itself, as a ground justifying terminating a father-child relationship.” *Id.* To terminate parental rights a court must find the existence of one of the statutory grounds upon which such a conclusion may be based by clear and convincing evidence, and by a preponderance of the evidence that terminating that right is in the child’s best interests. *Jennifer G. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 450, ¶ 12, 123 P.3d 186, 189 (App. 2005).

¶8 The court here did not find any of the statutory grounds for severance proven, but instead severed Dustin’s rights solely based on genetic testing. Our legislature has provided no statutory basis for severing a parent’s rights by that method. *See* § 8-533. Therefore, in the absence of any statutory grounds for severance, the court could not terminate Dustin’s parental rights as it did. And, because the court had no basis on which to sever Dustin’s parental rights, it could not establish paternity in Clayton. Nothing in the paternity statute allows a court to establish paternity based on genetic

testing when paternity already exists in another man whose parental rights have not been severed. *See* A.R.S. § 25-814(C). In view of this resolution, we need not address Dustin's remaining arguments.

Disposition

¶9 We decline special action jurisdiction and dismiss the petition for special action. For the reasons stated, however, the judgment of the juvenile court is reversed.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed August 15, 2012.